

CARTELS IN PUBLIC PROCUREMENT: HOW TO DETECT UNLAWFUL BEHAVIOR BY SUPPLIERS?

Participation of a supplier in a public procurement procedure should be independent in nature. However, you might notice suspicious behavior indicating that suppliers have entered into a cartel, that is, they have agreed not to compete with each other and have decided the winner of the tender upfront. Such agreements result in increased prices or lower quality of the goods or services bought through a public procurement procedure. A cartel in public procurement results in harm to the purchasing authority, consumers and fair suppliers.

Anti-competitive agreements are prohibited under Article 4 of the Law on Protection of Competition and may result in a fine for a company of up to 10 per cent of the total annual worldwide turnover in the preceding business year. Suppliers who have solicited or entered into agreements that restrict competition are not eligible to participate in public procurement procedures for ten years.



WHAT ARE THE WARNING SIGNS OF BID RIGGING?

PRICE



- Prices are too high
- Identical or very similar prices
- A large difference between the price of a winning bid and other bids
- Sudden and identical increases in price by bidders that cannot be explained by cost increases
- A certain supplier's bid is much higher for a particular contract than that supplier's bid for another similar contract.

BID PROPOSALS



- Identical mistakes in the bid documents submitted by different companies
- Bid documents submitted by different companies look alike
- Bids from different companies contain identical miscalculations
- Similar replies to your follow-up questions
- Other similarities in bid documents submitted by different companies: contact details, document order, hand-written notes
- Bid documents submitted by different companies contain less detail than would be necessary or expected, or give other indications of not being genuine.

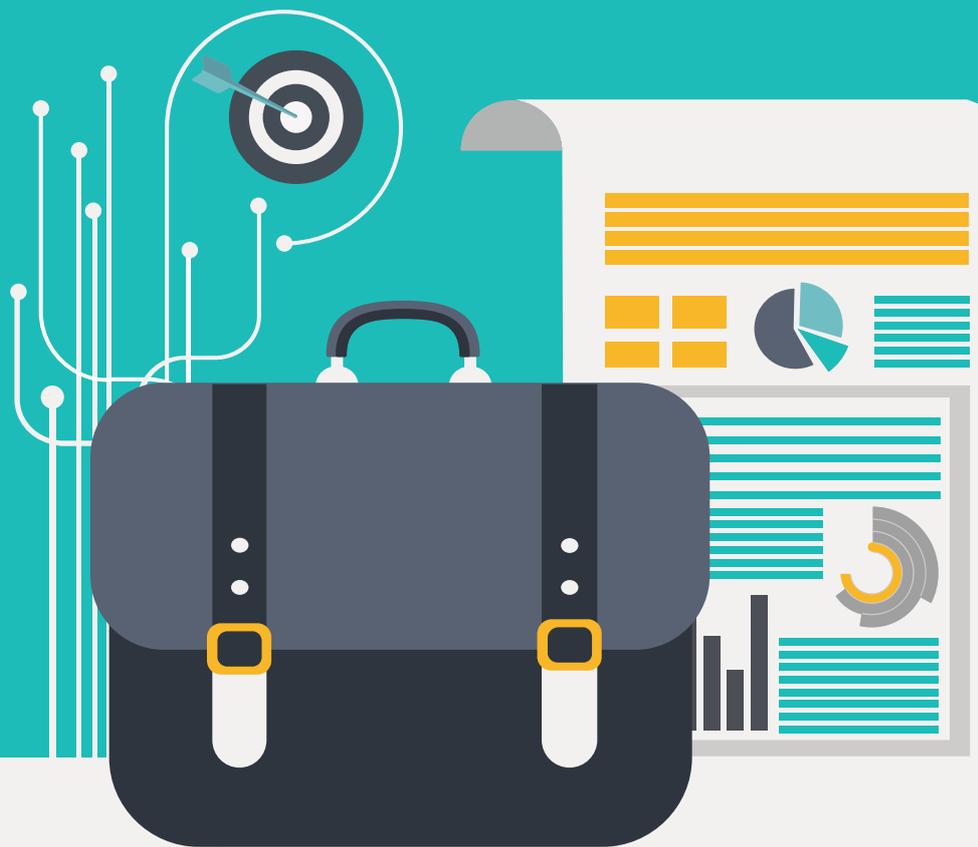
PARTICIPANTS



- Same companies participating all the time or just one company submits bids
- The same supplier is often the lowest bidder
- Some suppliers unexpectedly withdraw from bidding
- Certain companies always submit bids but never win
- The winning bidder repeatedly subcontracts work to unsuccessful bidders
- The winning bidder does not accept the contract and is later found to be a subcontractor.

The indicators of possible bid rigging described above identify numerous suspicious bid and pricing patterns indicating that suppliers might have agreed to restrict competition. One or two of these indicators should not, however, be taken as proof that firms are engaging in bid rigging, and a case-by-case assessment should be conducted.

It is both the right and the obligation of the purchasing authority to ensure effective competition in public procurement. A purchasing authority should be proactive and if it suspects that competition has been restricted due to a potential agreement between suppliers, it has to take appropriate actions against the unfair suppliers.



SUSPECTING A CARTEL? WHAT TO DO?

If you identify at least a few of the indicators from the list above, contact the Competition Authority. Please make sure that you do not discuss your concerns with suspected participants. Preserve all documents, including bid documents, correspondence, envelopes, etc.



NOTE!

Article 4 of the Law on the Protection of Competition applies to bid rigging only when the agreement is entered into between competitors, i.e. companies, who do not belong to the same group of companies.